

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NEW YORK  
Northern Division

CLERK OF COURT  
MIDDLE DISTRICT

Tony Murray #129256 \*  
Plaintiff, \*

v. \* CASE NO: 205-CV-1240-MEF  
Ms. Velinda Weatherly \*  
Defendant. \*

MOTION AND OPPOSITION  
TO DEFENDANT SPECIAL REPORT.

FROM THE UNITED STATES MAGISTRATE JUDGE  
ORDER DATE, MARCH 2, 2006 AND MARCH 6, 2006  
THE UNITED STATES MAGISTRATE JUDGE ORDER THE  
DEFENDANT RESPONSE TO THE COMPLAINT.  
THE JUDGE ORDER READ:

ORDER

FOR GOOD CAUSE, IT IS  
ORDERED THAT ON OR BEFORE MARCH 16, 2006  
DEFENDANT WEATHERLY SHALL FILE AN AFFIDAVIT  
REGARDING HER KNOWLEDGE OF THE SUBJECT MATTER  
OF THE INSTANT COMPLAINT AND ANY EVIDENTIARY  
MATERIAL SHE DEEMS PERTINENT IN RELATION  
THERE TO. SEE MAGISTRATE/JUDGE ORDER DATE  
MARCH 2, 2006. (THEREAFTER THE DEFENDANT  
VELINDA WEATHERLY FILED HER SPECIAL REPORT  
WITHOUT AFFIDAVIT REGARDING HER KNOWLEDGE  
OF THE SUBJECT MATTER OF THE INSTANT COM-  
PLAINT AND DID NOT PRESENT ANY EVIDENTIARY  
MATERIAL SHE DEEMS PERTINENT IN RELATION  
THERE TO, (SEE: DEFENDANT SPECIAL REPORT))

THE MAGISTRATE JUDGE THEREAFTER ORDER THE  
PLAINTIFF, WHICH THE ORDER READS:

(1)

THE MAGISTRATE JUDGE HAS REVIEWED THE SPECIAL REPORT AND SUPPORTING EVIDENTIARY MATERIALS FILED BY DEFENDANT (DOC, Nos. 5, 7,) AND DETERMINED THAT PLAINTIFF ~~MUST~~ FILE A RESPONSE IN OPPOSITION TO SUCH PLEADINGS, ACCORDINGLY, IT IS ORDERED THAT ON OR BEFORE MARCH 27, 2006, PLAINTIFF SHALL FILE A RESPONSE TO THE WRITTEN REPORT. (SEE THE MAGISTRATE JUDGE ORDER DATE MARCH 6, 2006).

THE COURT ORDER STATES, IF PLAINTIFF FAILS TO FILE A RESPONSE AS REQUIRED BY THIS ORDER, THE COURT WILL TREAT THE FAILURE TO RESPONSE AS AN ABANDONMENT OF THE CLAIMS SET-FORTH IN THE COMPLAINT AND AS A FAILURE TO PROSECUTE THIS ACTION. (SEE THE MAGISTRATE JUDGE ORDER DATE MARCH 6, 2006).

THE DEFENDANT VELINDA (WEATHERLY) SPECIAL REPORT ALLEGED; MURRAY ALLEGES THAT (WEATHERLY) MADE STATEMENTS DURING A PAROLE HEARING TO THE EFFECT THAT MURRAY "RAN" THE PRISON WHERE HE IS CONFINED AND THAT PRISON GUARDS ARE AFRAID OF HIM. MURRAY CONTENDS THAT THIS DEPRIVED HIM OF LIBERTY WITHOUT AFFORDING HIM DUE PROCESS OF LAW BY DEPRIVING HIM OF A "FAIR" CHANCE AT PAROLE. (SEE THE SPECIAL REPORT AT P.1.)

THE PLAINTIFF UNDERSTAND THE RIGHT TO A PAROLE IS A PRIVILEGE GRANTED BY THE PEOPLE OF ALABAMA TO THOSE COMMITTED TO THE PENAL INSTITUTIONS AS PUNISHMENT FOR CRIMES. SEE: ELLARD V. STATE, 474 SO. 2D 743 (ALA, CRIM.

App. 1984), AFF'd, 474 SO. 2d 758 (ALA 1985)  
 THE PLAINTIFFS UNDERSTAND ALABAMA PAROLE  
 STATUTES DO NOT CREATE A "LIBERTY INTEREST"  
 ENTITLED TO PROTECTION UNDER THE DUE PROCESS  
 CLAUSE OF EITHER THE UNITED STATES OR THE  
 STATE CONSTITUTION. ELLARD V. STATE, 474 SO.  
 2d 743 (ALA. CRIM. APP. 1984), BUT SEE ELLARD V.  
 ALABAMA Bd. OF PARDONS AND PAROLES. 824 F.2d  
 937 11th CIR, 1987, CERT. DENIED, 485 U.S. 981, 108  
 S. CT, 1280, 99 L. ED. 2d 491 (1988).

THE DEFENDANT WEATHERLY, ARGUES THAT MURRAY  
 IS SEEKING MONETARY DAMAGES FROM WEATHERLY  
 FOR ACTIONS TAKEN ON THE BENCH DURING THE  
 HEARING HELD TO DECIDE WHETHER PAROLE SHOULD  
 BE GRANTED, SHE IS ABSOLUTELY IMMUNE FROM  
 SUIT FOR THESE ACTS. (SEE SPECIAL REPORT AT  
 P.1).

PLAINTIFFS UNDERSTAND THE ALABAMA STATUTE  
 CALLS FOR DISCRETIONARY RATHER THAN MAN-  
 DATORY ACTION ON THE PART OF THE PAROLE  
 BOARD. THE LAW DIRECTS THE BOARD TO  
 CONSIDER A NUMBER OF FACTORS IN MAKING  
 THEIR DETERMINATION, WHICH IS A SUBJECTIVE  
 RATHER THAN OBJECTIVE DETERMINATION. IT  
 DOES NOT CONTAIN ANY LANGUAGE THAT MAN-  
 DATES PAROLE WHEN THE STATUTE IS FRAMED  
 IN DISCRETIONARY TERM, THERE IS NOT A  
 LIBERTY INTEREST CREATED. ELLARD V. STATE,  
 474 SO. 2d 758 (ALA. 1985), SEE ELLARD V.  
 ALABAMA Bd OF PARDONS AND PAROLES. 824  
 F.2d 937, 11th CIR, 1987, CERT. DENIED, 485  
 U.S. 981, 108 S. CT 1280, 99 L. ED. 2d 491 (1988).

THE DEFENDANT SPECIAL REPORT STATED NONE  
 OF WEATHERLY'S ALLEGED ACTIONS VIOLATE ~~CLARK~~  
 (3)

ESTABLISHED LAW. A REASONABLE PAROLE BOARD MEMBER WOULD NOT KNOW THAT IT IS UNCONSTITUTIONAL TO HAVE AN OPINION ABOUT A PRISONER BASED ON HIS PRIOR HISTORY. SHE IS ENTITLED TO QUALIFIED IMMUNITY. (SEE THE SPECIAL REPORT OF DEFENDANT AT P.1). THE PAROLING AUTHORITY MUST COMPLY WITH CONSTITUTIONAL REQUIREMENTS AND MAY NOT DETERMINE PAROLE ELIGIBILITY ON IMPROPER GROUNDS. ANDREWS V. LAMBERT, 424 SO. 2D 5 (1982). PLAINTIFF MURRAY WAS DENIED FAIR DECISION FOR PAROLE ON FALSE INSUFFICIENT, OR CAPRICIOUS REASONS.

THE DEFENDANT VELINDA WEATHERLY SUPPORTED FALSE INFORMATION, BOARD VIOLATED DUE PROCESS BY RELYING ON FALSE INFORMATION IN A PRISONER'S FILE IN ORDER TO DENY HIM PAROLE IN A MINIMUM SECURITY CLASSIFICATION EXCEEDED ITS AUTHORITY UNDER THIS SECTION AND TREATED HIM ARBITRARILY AND CAPRICIOUSLY IN VIOLATED OF DUE PROCESS. MONROE V. THIGPEN, 932 F.2D 1437 (11th Cir. 1991).. PLAINTIFF MURRAY CLAIMING ALL HIS WITNESSES TESTIMONY OR STATEMENTS IN THE AFFIDAVIT THAT IS ATTACHED TO THE PLAINTIFF RESPONSE TO THE DEFENDANT SPECIAL REPORT. THE DEFENDANT WEATHERLY DID ENGAGE IN FLAGRANT OR UNAUTHORIZED ACTION. MONROE V. THIGPEN, 932, F.2D 1437 (1991).

Respectfully Submitted

A Tony M. Murray  
Tony Murray

CERTIFICATE OF SERVICE

I DO hereby swear under the PENALTY OF Perjury, THAT I HAVE SERVED A COPY OF THIS MOTION ON CLERK OF THE UNITED STATES DISTRICT COURT - FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION by placing A COPY in the U.S. MAIL postage prepaid AND CORRECTLY ADDRESSED.

DONE this 26<sup>th</sup> day of October, 2006

Respectfully Submitted,  
/s/ Tony M. Murray 12923